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UNITED STATES OF AMERICA,) **Docket No. 13 CR 50019**
)
 Plaintiff,)
)
 v.)
)
 DARON CISTRUNK,)
)
 Defendant.)

APPEARANCES:

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Court Reporter:

**Mary T. Lindbloom
327 S. Church Street
Rockford, Illinois 61101
(815) 987-4486**

1 **THE CLERK:** 11 CR 50062-1, U.S.A. v. Dayton Poke, and
2 **13 CR 50019, U.S.A. v. Daron Cistrunk.**

3 **MR. PEDERSEN:** Good afternoon, your Honor. Joe
4 **Pedersen on behalf of the United States.**

5 **MR. CAVER:** Brendan Caver appointed for Mr. Poke.

6 **THE COURT:** All right. Show Mr. Poke appears and
7 **Mr. Daron Cistrunk appears. Mr. Cooper, if you'll just stand**
8 **by. We may need your services. I don't know for sure.**

9 **MR. COOPER:** All right.

10 **THE COURT:** You're Daron Cistrunk. Mr. Cistrunk, talk
11 **directly into that mike so everyone can hear what you say. Will**
12 **you did that for us?**

13 **DEFENDANT CISTRUNK:** Yes, sir.

14 **THE COURT:** At the request of Mr. Dayton Poke, who is
15 **the defendant at counsel table to my right, a subpoena was**
16 **issued requiring you to appear in this courthouse as a witness**
17 **on his behalf in a jury trial which began or was to begin on**
18 **March 25th, 2013. That's last Monday. That subpoena was served**
19 **upon you, and you failed to appear.**

20 **When you failed to appear, I issued a bench warrant for**
21 **your arrest. I also requested the United States Attorney's**
22 **Office to prepare and file a rule to show cause requiring you to**
23 **show cause why you should not be held in contempt of court for**
24 **your failure to appear. Have you received a copy of that rule**
25 **to show cause?**

1 **DEFENDANT CISTRUNK:** No, sir.

2 **THE COURT:** All right. Could we provide him with a
3 copy?

4 **MR. PEDERSEN:** Yes, your Honor.

5 **THE COURT:** That rule to show cause states that as
6 required by Rule 42(a)(1)(A) of the Federal Rules of Criminal
7 Procedure, the trial of the criminal contempt shall be held on
8 such date and time as stated in open court by the court or in
9 any order to show cause that may be issued.

10 The essential facts constituting the charged criminal
11 contempt are set forth in the attached affidavit of Deputy
12 United States Marshal Frank D. Schermer. Is that affidavit
13 attached to your copy of the rule to show cause?

14 **DEFENDANT CISTRUNK:** Yes, sir.

15 **THE COURT:** The essential facts -- I'm sorry. To prove
16 the criminal contempt, the government will rely upon witness
17 testimony. By this motion, the government respectfully provides
18 notice to Cistrunk as set forth herein. Wherefore, the
19 government respectfully requests that this court enter a rule to
20 show cause why Daron Cistrunk should not be held in contempt of
21 this court for failure to appear in court as ordered.

22 Do you understand the petition?

23 **DEFENDANT CISTRUNK:** Yes, sir.

24 **THE COURT:** If you are determined to be in contempt of
25 court, you may be sentenced to jail or fined. I'm limiting the

1 sentence in this case to six months in jail and \$5,000, which
2 obviates the need for a jury trial in this matter.

3 In connection with these proceedings, you have the
4 right to certain rights. You have a right to an attorney. If
5 you cannot afford an attorney, I will appoint an attorney to
6 represent you at no cost to you. Are you going to hire an
7 attorney?

8 DEFENDANT CISTRUNK: No, sir.

9 THE COURT: Why is that?

10 DEFENDANT CISTRUNK: I don't have the money.

11 THE COURT: Pardon?

12 DEFENDANT CISTRUNK: I can't afford it.

13 THE COURT: Do you work?

14 DEFENDANT CISTRUNK: No, sir.

15 THE COURT: Do you have any income?

16 DEFENDANT CISTRUNK: No, sir.

17 THE COURT: Do you own any property?

18 DEFENDANT CISTRUNK: No, sir.

19 THE COURT: Do you have any bank accounts?

20 DEFENDANT CISTRUNK: No, sir.

21 THE COURT: Do you have any money?

22 DEFENDANT CISTRUNK: No, sir.

23 THE COURT: How do you live?

24 DEFENDANT CISTRUNK: With my sister. But I go to
25 school.

1 **THE COURT: Where do you go to school?**

2 **DEFENDANT CISTRUNK: In Gary, Indiana. I'm a barber.**
3 **Barber college.**

4 **THE COURT: Who supports you, who feeds you, and who**
5 **gives you a place to stay?**

6 **DEFENDANT CISTRUNK: My sister.**

7 **THE COURT: How old are you?**

8 **DEFENDANT CISTRUNK: 25.**

9 **THE COURT: I will appoint Attorney Alan Cooper to**
10 **represent Mr. Cistrunk.**

11 **You also have a right to be informed of the allegations**
12 **against you. You have a right to deny the allegations. You**
13 **have a right to a trial. You have a right to notice of any**
14 **proceedings in connection with this action. You have a right to**
15 **present evidence in your own behalf. You have a right to**
16 **subpoena witnesses to testify in court on your behalf. You have**
17 **a right to cross-examine the government's witnesses. You have a**
18 **right to compel the government to prove beyond a reasonable**
19 **doubt that you committed knowingly and willfully a violation of**
20 **a court order. You have a right to be protected from compelled**
21 **self-incrimination. You have a right to remain silent. I must**
22 **inform you that anything you say in court can and will be used**
23 **against you in future court proceedings.**

24 **Do you understand all those rights?**

25 **DEFENDANT CISTRUNK: Yes, sir.**

1 **THE COURT:** All right. I'll set this matter for
2 hearing on the motion for rule to show cause.

3 **What's** your position as far as detention hearing,
4 **Mr. Cooper?** I'm talking about between now and the time I can
5 set this for hearing on the motion for rule to show cause.

6 **MR. COOPER:** We would not want him detained in the
7 meantime if he's going to school, even if it's barber school or
8 something like that, and we would be prepared to have a hearing
9 on this very quickly.

10 **THE COURT:** All right. Well, Section 3142 of Title 18
11 says a detention hearing shall be held immediately upon the
12 contemnor's first appearance before the judicial officer unless
13 that person or the attorney for the government seeks a
14 continuance. We can have the hearing right now, if you wish.

15 **MR. PEDERSEN:** The motion for the rule to show case?

16 **THE COURT:** Or the detention hearing.

17 **MR. COOPER:** We certainly would like that hearing.

18 **THE COURT:** Mr. Pedersen, what's the government's
19 position?

20 **MR. PEDERSEN:** That's fine, your Honor.

21 **THE COURT:** All right. The government may proceed.
22 Again, I have to consider the factors contained in 3142(g).
23 Please proceed. I'll take into consideration the affidavit
24 filed by Deputy Marshal Scherner.

25 **MR. PEDERSEN:** Could I just have a moment, your Honor?

1 **THE COURT:** **Sure.**

2 **(Brief pause.)**

3 **MR. PEDERSEN:** **Thank you, Judge. We're ready to**
4 **proceed on the detention hearing, but as far as the other case,**
5 **I don't know why it's necessary for Mr. Poke to be present**
6 **during the detention hearing, given that there may be questions**
7 **that Mr. Cooper asks that may reveal personal information that**
8 **Mr. Poke wouldn't be entitled to know or --**

9 **THE COURT:** **Okay. I agree. Could you take Mr. Poke**
10 **back, please? And just hold him We'll get to the material**
11 **witness warrant right after I resolve this issue.**

12 **(Whereupon, Defendant Poke was escorted from the courtroom)**

13 **THE COURT:** **All right. Mr. Pedersen.**

14 **MR. PEDERSEN:** **Your Honor, by way of proffer, I can**
15 **advise the court based on our information, we're not aware of**
16 **any prior convictions that this defendant has in either state or**
17 **federal court.**

18 **Our understanding is that the defendant was served with**
19 **a subpoena in this case and advised to appear Monday of this**
20 **week. He didn't appear. Also included with the subpoena was**
21 **the phone number of the defense attorney who represented**
22 **Mr. Poke prior to Mr. Caver being appointed, and based on the**
23 **representations of that attorney in court, Mr. Cistrunk never**
24 **contacted him by telephone. Attempts were made to contact**
25 **Mr. Cistrunk, but he did not -- his phone number was not in use**

1 or service. That's all the information I would have by way of
2 proffer.

3 THE COURT: Mr. Cooper.

4 MR. COOPER: Yes, your Honor. By way of proffer --
5 well, I'm prepared to put on evidence, too, as a matter of fact.
6 Mr. Cistrunk is prepared to admit that sometime earlier in March
7 he was served with a subpoena. There's no dispute about that.
8 He misunderstood or -- I haven't seen the subpoena. So, I don't
9 know what it said. But he understood the subpoena to require
10 him to be in court today, March 27th, rather than March 25th.
11 It's his fault if it said the 25th. But that was the source of
12 the problem with him

13 And when the Marshal's Office contacted him I guess on
14 Monday this week, on the 25th or whatever -- or maybe it was
15 Tuesday, I'm not sure -- why he -- that he was supposed to be in
16 court, I think he indicated that he thought he was supposed to
17 be here on the 27th, that that was a misunderstanding on his
18 part.

19 By way of -- I am also prepared to put on the witness
20 stand Marie Harris, who is here in court, who is Daron's aunt,
21 who resides in Rockford and who is willing -- has coordinated
22 with Daron's mother and is willing to have Daron stay in
23 Rockford living with her until we can have a hearing on the
24 motion for rule to show cause.

25 THE COURT: All right. Anything else by either party?

Harris - Direct

1 **MR. COOPER:** No. I guess I would make that in the form
2 of a proffer, unless the court wants to hear anything from
3 **Ms. Harris.**

4 **THE COURT:** It's up to you.

5 **MR. COOPER:** Well, I will call **Ms. Harris** as a witness
6 then. **Ms. Harris**, would you step forward?

7 **THE COURT:** Would you raise your right hand, please?
8 (**Witness duly sworn.**)

9 **THE COURT:** Would you please take a seat over at the
10 witness stand here?

11 **THE WITNESS:** Yes, sir.

12 **MARIE HARRIS, DEFENDANT'S WITNESS, SWORN**

13 **DIRECT EXAMINATION**

14 **BY MR. COOPER:**

15 **Q.** Would you state your name, please?

16 **A.** Marie Harris.

17 **Q.** Where do you reside?

18 **A.** Xxxx xxxxxx xxxxx.

19 **Q.** In Rockford?

20 **A.** Rockford, Illinois.

21 **Q.** How long have you resided there?

22 **A.** I moved in on the first of this month. Me and my children
23 was residents at the WCC -- at the Women's Crisis Center. It's
24 a shelter. We was there. And I just moved into my place on the
25 first of this month, but I been living here in Rockford for

Harris - Direct

1 almost three years now.

2 Q. Is this residential that you're in, a house or an apartment?

3 A. A house.

4 Q. How many bedrooms?

5 A. Three bedrooms.

6 Q. How many people presently live there with you?

7 A. My three children.

8 Q. How old are they?

9 A. Fifteen -- my daughter is 15. I have an eleven-year old
10 daughter, and I have a seven-year old son.

11 Q. How are you related to Daron Cistrunk?

12 A. He's my nephew. His mom is my sister.

13 Q. Are you willing to have Daron live in your house in Rockford
14 with you and your children until a hearing can be held on this
15 matter we're here on today?

16 A. Yes, sir. Yes, sir.

17 Q. Are you or any of your children on probation or anything
18 like that?

19 A. No, sir.

20 Q. Do you have any pending criminal court cases?

21 A. No, sir.

22 Q. Do any of your children have pending criminal court cases?

23 A. No, sir.

24 Q. Do you work?

25 A. No, sir, I don't work.

Harris - Cross

1 **Q. So, you're home all day?**

2 **A. I'm home, yes.**

3 **Q. And you've known Daron basically for all his life?**

4 **A. All his life.**

5 **Q. And do you think he could be counted on to stay around and**
6 **come back to court --**

7 **A. Yes.**

8 **Q. -- when a hearing is set on this motion for contempt?**

9 **A. Yes, sir.**

10 **MR. COOPER: I have nothing further.**

11 **THE COURT: Mr. Pedersen.**

12 **CROSS EXAMINATION**

13 **BY MR. PEDERSEN:**

14 **Q. Did you know anything about your nephew having to appear in**
15 **court sometime this week?**

16 **A. No, sir. I talked to -- I can't remember his name. Dan,**
17 **Danny? I can't remember his name. I talked to him back in the**
18 **summer, and he gave me information to pass on to Daron, and I**
19 **gave -- I told Daron about it, and Daron gave me a number to**
20 **give back to him, and I gave him that number. So, they talked**
21 **from there.**

22 **Q. Okay. When did you find out that he was supposed to have**
23 **appeared in court?**

24 **A. I found out, actually, yesterday.**

25 **Q. From who?**

Harris - Cross

1 **A. His mom**

2 **Q. Okay. Your sister?**

3 **A. Yes.**

4 **MR. PEDERSEN: That's all the questions I have.**

5 **MR. COOPER: I have nothing further.**

6 **THE COURT: You may step down, Ms. Harris. Thank you**
7 **very much.**

8 **THE WITNESS: Yes, sir.**

9 **(Witness excused.)**

10 **MR. COOPER: I think I am going to call Daron Cistrunk,**
11 **as well, your Honor.**

12 **THE COURT: All right. Mr. Cistrunk, raise your right**
13 **hand.**

14 **(Defendant duly sworn.)**

15 **THE COURT: Please take a seat at the witness stand.**

16 **DARON CISTRUNK, DEFENDANT HEREIN, SWORN**

17 **DIRECT EXAMINATION**

18 **BY MR. COOPER:**

19 **Q. Would you state your name, please?**

20 **A. My name is Daron Cistrunk.**

21 **Q. How do you spell your first name?**

22 **A. D-a-r-o-n.**

23 **Q. How do you spell your last name?**

24 **A. C-i-s-t-r-u-n-k.**

25 **Q. You and I had met for a few minutes today before today's**

Cistrunk - Direct

1 court proceedings; is that correct?

2 A. Yes, sir.

3 Q. And I had explained to you what was up today, that is, a
4 motion for a rule to show cause why you should not be held in
5 criminal contempt of court?

6 A. Yes, sir.

7 Q. And I explained to you that was because you had been served
8 with a subpoena which the government alleges required you to
9 appear in court as a witness this Monday, the 25th, and that you
10 had failed to appear. Did I explain that to you?

11 A. Yes, sir.

12 Q. And you and I discussed why you had failed to appear; is
13 that correct?

14 A. Yes, sir.

15 Q. Were you, in fact, served with papers that you understood to
16 be a subpoena sometime earlier in March?

17 A. Yes, sir.

18 Q. And what was your understanding as to what date you were
19 required to be in court?

20 A. The 27th.

21 Q. All right. Do you know as you sit there today whether the
22 subpoena said the 25th or the 27th?

23 A. No. No, sir. I thought it said the 27th. But no, sir.

24 Q. All right. I want you to assume with me that it said the
25 25th.

Cistrunk - Direct

1 A. Yes, sir.

2 Q. If it did say the 25th, how do you account for the fact that
3 you thought it was the 27th?

4 A. Because two incidents happened in my family, and like stuff
5 was running -- a lot of stuff was running in my family, and I
6 really didn't have a chance again to go look at the subpoena. I
7 just knew in my head it was the 27th. So, today I was on my way
8 down here.

9 And I want to tell the judge and the court that I'm
10 sorry for making this mistake and not looking at it again and
11 seeing it was the 25th and supposed to be here Monday. It was
12 my mistake. I know it was. And I'm sorry for that.

13 Q. Okay. If the judge allows you to stay out of detention, out
14 of incarceration, until we can have a hearing on the motion for
15 contempt, would you be willing to stay with -- especially if the
16 judge ordered it, would you stay with your aunt and her family?

17 A. Yes, sir. I'll stay in Rockford, Illinois, until the day,
18 and I will be here that day on that day.

19 Q. You will guarantee the judge and the government that you
20 will be here for the hearing on this motion?

21 A. Yes, sir.

22 Q. All right.

23 MR. COOPER: I have nothing further.

24 THE COURT: You may step down, Mr. Cistrunk.

25 (Witness excused.)

1 **THE COURT:** Any more evidence, Mr. Cooper?

2 **MR. COOPER:** No more evidence, no.

3 **THE COURT:** Mr. Pedersen, any comment?

4 **MR. PEDERSEN:** No, your Honor.

5 **THE COURT:** Any comment, Mr. Cooper?

6 **MR. COOPER:** Yes. I think it's unfortunate. The court
7 has a right to expect its subpoenas to be honored. There's no
8 question about that. This is a mistake by Mr. Cistrunk, which
9 he acknowledges, and I just -- I don't see that it's necessary
10 for the court to detain him until we have a hearing on this
11 matter. I think there is a good alternative been presented to
12 the court with him staying at his aunt's house.

13 **THE COURT:** All right. Thank you.

14 I've considered the factors contained in Section
15 3142(g). The most glaring fact in this case is that
16 Mr. Cistrunk was ordered to appear in court. He was under a
17 court order to appear in this courtroom on a certain date, and
18 he didn't comply with that order. He tells me he didn't have a
19 chance to look at a subpoena. It takes a minute to look at a
20 subpoena. It takes 30 seconds to get a piece of paper out and
21 look at a subpoena. I can't believe that a man that doesn't
22 have a job, that doesn't have any obligations, that only goes to
23 school can't take -- in spite of these unknown family
24 circumstances, couldn't take a half a minute to look at a piece
25 of paper that he was -- and if I was him that would be the most

1 important piece of paper in my life is a subpoena from a federal
2 court to appear in a federal jury trial.

3 He says that this was a mistake. It was not a mistake
4 without consequences. He says he's sorry, but that doesn't
5 change the fact that we called 30 people from the community to
6 take away from their lives and their families and their jobs.
7 They were examined all day long. They stayed here an entire
8 day. We used an entire day of court time. And during this
9 entire time I was relying on Mr. Cistrunk to do what he was
10 supposed to do, to do what he was ordered to do, to appear in
11 court. It was a simple thing. It was an easy thing. And he
12 didn't do it. So, I had to send those 30 people home. They
13 wasted the day here. I wasted a day that I could have been
14 spending on other cases, all in the hopes that Mr. Cistrunk
15 would do what he was supposed to do. He didn't do it.

16 There's also the matter of the amount of money that the
17 government spent on these people. It probably approaches
18 \$3,000. \$3,000 they spent for these people, and Mr. Cistrunk is
19 cooling his heels back in Gary, Indiana, or someplace in
20 Indiana, wherever he was.

21 I have a duty to assure that this case does not have to
22 undergo any further unavoidable or avoidable delays. And as far
23 as him staying with Ms. Harris, Marie, I'll say that I'm glad
24 you came to court. You spoke well by your nephew. I appreciate
25 your offer to keep him with you. I'm sure his family

1 appreciates it. But the problem that I have is that Daron says,
2 Aunt Marie, I'm not staying here anymore. I'm going back to
3 Indiana. There's nothing you can do to stop that. He's going
4 to walk out the door, and that will be it for you.

5 I find that there are no reasonable conditions of
6 release that will reasonably assure the appearance of
7 Mr. Cistrunk in court as required by the court. I've ordered
8 him to appear in court once. He ignored that order, disregarded
9 it, disobeyed it. And with that kind of history, I think that I
10 need to hold him in custody until I have the hearing in this
11 case. I'll set this hearing as soon as possible.

12 I'll order that he be committed in custody for
13 confinement in a corrections facility separate to the extent
14 practicable from persons awaiting or serving sentences or being
15 held in custody pending appeal. That the person -- that
16 Mr. Cistrunk be afforded a reasonable opportunity for private
17 consultation with counsel and order that the persons in charge
18 of the corrections facility where he is held shall deliver him
19 in court to this courtroom on the date that I set for detention
20 hearing.

21 As I've said, I would like to set this as soon as
22 possible. How about Tuesday? Is that available for the
23 parties?

24 MR. PEDERSEN: April 2nd?

25 THE COURT: April 2nd. That's right.

1 MR. PEDERSEN: Yes I can.

2 MR. COOPER: I can be available that day, your Honor.
3 I take it the court has nothing earlier. We have a situation
4 here where it appears to me, based on the testimony that the
5 court has heard today, that this will be a very brief hearing on
6 the contempt matter.

7 THE COURT: I can do it Monday afternoon. Is that
8 better?

9 MR. COOPER: Well, that's better. I was hoping for
10 tomorrow, to tell the truth.

11 THE COURT: Okay. Well, tomorrow I'm in Dixon -- or
12 Dirksen.

13 MR. COOPER: Okay. And is Friday a court holiday?

14 THE COURT: No, not that I know of.

15 MR. COOPER: Well, I didn't know. It's Good Friday. I
16 didn't know whether it was a court holiday or not.

17 THE COURT: No. I can't do it on Friday.

18 MR. COOPER: You can't do it on Friday, either?

19 THE COURT: No. 2:30 on Monday afternoon.

20 MR. COOPER: I'm sorry?

21 THE COURT: 2:30 on Monday afternoon.

22 MR. COOPER: That's fine. Thank you.

23 THE COURT: All right. That resolves for now the
24 motion for rule to show cause. We have to take up the second
25 matter. Could you have Mr. Poke brought in? We'll need

1 **Mr. Cistrunk here for the hearing on the material witness**
2 **warrant.**

3 **(Whereupon, Defendant Poke was brought into the courtroom)**

4 **THE COURT: All right. This is a separate proceeding.**
5 **Mr. Cistrunk, I must advise you that when you didn't appear as**
6 **required by your subpoena, Mr. Poke through his attorney filed**
7 **with me a material witness warrant asking me that you be**
8 **detained and alleging that you are a material witness in their**
9 **case, and I issued that material witness warrant, and you're**
10 **here on that and in custody on that in addition to the**
11 **government's motion for rule to show cause.**

12 **How do the parties wish to proceed? Show Mr. Poke**
13 **appears with Mr. Caver, his attorney.**

14 **MR. PEDERSEN: Your Honor, I had some discussions with**
15 **Mr. Caver, who has just been appointed and wasn't Mr. Poke's**
16 **attorney at the time that the material witness warrant was**
17 **requested. My reading of 18 U.S.C. Section 3144 indicates that**
18 **an affidavit is required to be filed by the party that is**
19 **requesting detention of the individual, that is, the material**
20 **witness.**

21 **I checked the record. I thought maybe Mr. Byrd had**
22 **filed an affidavit in support of his motion to continue the**
23 **trial date from one of the earlier settings. He did not. So, I**
24 **don't know that it would be proper at this point to proceed as**
25 **to this aspect regarding the material witness until the**

1 defendant files such an affidavit, if they wish to do so.

2 **MR. CAVER:** Judge, thank you. I was appointed to the
3 case yesterday, as Mr. Pedersen recited to the court. I have
4 had an opportunity to briefly review 3144. At this time I do
5 not have an affidavit. I don't have a file yet on this case. I
6 have briefly spoken with previous counsel, but I don't have any
7 material information with respect to be able to do -- to file an
8 affidavit at this time.

9 **THE COURT:** Well, let me say, though. Mr. Byrd several
10 times during these proceedings I've had with Mr. Poke stated as
11 an officer of the court on the record that Mr. Cistrunk was a
12 material witness to his case. I mean, I'm sure the government
13 would have been glad to go ahead without Mr. Cistrunk's
14 testimony. I would have had no problem going ahead without his
15 testimony. It was Mr. Poke that demanded that Mr. Cistrunk be
16 here.

17 **MR. CAVER:** Yes, Judge. I believe that based on the
18 limited facts that I have, I genuinely do believe as an officer
19 of the court that Mr. Cistrunk is a material witness based on
20 the facts as I understand them. Unfortunately, I haven't had an
21 opportunity to review any of the discovery firsthand. The basis
22 of my information is only on my limited conversations with
23 Mr. Byrd. I haven't had an opportunity myself to review any
24 firsthand documentation for me to form my own information and
25 belief based on my review of any of the discovery as to the

1 nature.

2 Certainly, I know Mr. Byrd. I've worked with him in
3 the past. I have no reason to disbelieve what he told me. My
4 only representation to the court is that at this point, given
5 the limited time that I've had to assess the case on its merits
6 myself, the only information that I had to rely upon is my
7 discussions with Mr. Byrd.

8 THE COURT: All right. I assume you'd like some time
9 to talk to Mr. Poke then.

10 MR. CAVER: Yes, Judge.

11 THE COURT: Do you want to do that now, or do you want
12 me to set this for --

13 MR. CAVER: Judge, I'd be happy to speak with Mr. Poke
14 now at the court's convenience. My understanding is that
15 Mr. Cistrunk is being held for a detention hearing until at
16 least April 1st at 2:30 in the afternoon. I would make a
17 request, so that I have a reasonable time to meet with my
18 client, that if we could also set this matter over 'til that
19 date and time that I can have a reasonable time frame within
20 which to assess what Mr. Poke and I decide to do with respect to
21 Mr. Cistrunk's detention on the material witness warrant.

22 THE COURT: I'll set this for 10:00 o'clock on Monday
23 morning. Will that give you enough time?

24 MR. CAVER: That would be plenty, Judge. Thank you.

25 MR. PEDERSEN: For that hearing, will Mr. Cistrunk's

1 presence be required, as well?

2 **THE COURT:** Mr. Cooper, I don't see any reason
3 Mr. Cistrunk has to be here for that.

4 **MR. COOPER:** Well, what's the hearing going to be?

5 **THE COURT:** Actually, I don't know that it's going to
6 be a hearing. It's just going to be an opportunity for Mr. Poke
7 to file an affidavit that the testimony of Mr. Cistrunk is
8 material in a criminal proceeding, and then we'll have to
9 proceed under 3144 after that.

10 I notice that 3144 says no material witness may be
11 detained because of inability to comply with any conditions of
12 release if the testimony of such witness can be adequately
13 secured by deposition. And so, it may be that the parties will
14 want to take the deposition of Mr. Cistrunk.

15 **MR. COOPER:** Well, if the 10:00 o'clock Monday is just
16 a deadline for Mr. Caver to file the appropriate affidavit, then
17 I don't think I need to be here or Mr. Cistrunk needs to be
18 here. I can talk with counsel regarding the possibility --

19 **MR. PEDERSEN:** But if the court -- if there is an
20 affidavit filed and the court proceeds under 3142, then
21 Mr. Cistrunk would have to be here for that part.

22 **THE COURT:** But it says he can't be detained because of
23 an inability to comply with any condition of release if the
24 testimony of such witness can be adequately secured by a
25 deposition. I suppose Mr. Cistrunk would have to be here to

1 determine that issue. I can't hold him on the material
2 witness -- and, by the way, I don't want to hold him I have no
3 desire to hold Mr. Cistrunk in custody. I do it because after
4 my review of the factors under 3142(g), I believe I have to.
5 But according to the statute --

6 MR. PEDERSEN: I only brought it up, Judge --

7 THE COURT: -- if we can arrange for a deposition, then
8 he can't be held on the 3144 warrant.

9 MR. CAVER: Judge, I apologize. I don't mean to
10 interrupt the court unnecessarily, but I believe that if I have
11 a moment to speak with my client, given what I do know about the
12 case, we may be able to resolve the question as to whether or
13 not we will ask for him to be held on the material witness
14 warrant this afternoon.

15 THE COURT: All right. Okay. Well, I'll step down,
16 and let me know when you're ready.

17 MR. CAVER: I don't want to keep everybody here, but --

18 THE COURT: I'm here --

19 MR. CAVER: Thank you, Judge.

20 THE COURT: -- all the time, anyway.

21 MR. CAVER: I understand.

22 THE COURT: It doesn't make any difference to me. I'll
23 stay here as long as you want.

24 MR. CAVER: If I may just have a moment to speak with
25 my client.

1 **THE COURT:** Sure.

2 **MR. CAVER:** My understanding is we're going to have to
3 do that downstairs.

4 **THE COURT:** I think you can do it here right in the
5 holding cell. Frank, can they do it here?

6 **THE MARSHAL:** We'll make a special exception in this
7 case, your Honor.

8 **THE COURT:** Okay.

9 **MR. CAVER:** Thank you, Judge.

10 **THE COURT:** Sure. Please keep Mr. Cistrunk here.

11 (Brief pause.)

12 **MR. CAVER:** Judge, thank you for that time. I have
13 spoken with my client. My client understands that if we do not
14 file the affidavit that the proceedings for contempt will be
15 separate and apart from any hold on the material witness issue.
16 We do not -- we will not be filing an affidavit.

17 **THE COURT:** All right. Then where does that leave us?
18 The case is set for trial on May --

19 **MR. CAVER:** 6th, Judge.

20 **THE COURT:** May 6th. How are you going to secure the
21 attendance of Mr. Cistrunk?

22 **MR. CAVER:** Judge, we will be making a motion for the
23 court to continue his subpoena that had been previously issued
24 for that date and time to appear at trial.

25 **THE COURT:** And then what if I go through another day

1 where I call 30 people in, spend \$3,000 of the government's
2 money, spend an entire day here in court, which is important to
3 me because I've got hundreds of other cases I could be spending
4 a day working on, and Mr. Cistrunk decides he doesn't want to
5 appear? Then go ahead without Mr. Cistrunk?

6 MR. CAVER: Judge, I have discussed the possibility
7 that Mr. Cistrunk may not appear at the trial, and he
8 understands that the court is likely to be disinclined to grant
9 any motion to continue at that point based on Mr. Cistrunk's
10 nonappearance.

11 THE COURT: All right.

12 MR. CAVER: We have discussed the possible risks and
13 how they are outweighed -- the benefits outweigh the risks. We
14 are counting on the witness to appear as he has been ordered to
15 do so. And subject to our oral motion today for the court to
16 continue that subpoena to that date and time, we are going to
17 rely on the witness to comply with the order of the court.

18 THE COURT: All right. But when you're making this
19 cost-benefit analysis of what you're going to do, you should
20 understand that unless there are some very extraordinary,
21 exceptional circumstances, I will not continue this case and
22 that we will go to verdict whether Mr. Cistrunk appears or not.

23 MR. CAVER: Judge, I have discussed that with my client
24 at length.

25 THE COURT: All right. And knowing that, he declines

1 to issue the affidavit.

2 MR. CAVER: That is correct.

3 THE COURT: All right.

4 MR. PEDERSEN: Your Honor, the other thing by declining
5 to issue the affidavit, that they're waiving the right that they
6 would have the right to request is the deposition of
7 Mr. Cistrunk. If we're not proceeding under 18 U.S.C. 3144,
8 there will be no deposition. So, if he doesn't appear, they
9 will have no way to secure his testimony. I just want to make
10 sure that that's understood.

11 THE COURT: It's on the record. But if Mr. Poke
12 doesn't file his affidavit, then I'm going to quash the material
13 witness warrant.

14 MR. CAVER: Judge, if I may, also, make a brief record
15 for that. I have also spoken with Mr. Poke. He does
16 understand, and he has acknowledged to me that he understands
17 that there is no right to take a deposition if we don't file
18 that affidavit.

19 THE COURT: All right. So ordered. The material
20 witness warrant is quashed. I'll see Mr. Cistrunk on Monday
21 afternoon regarding the contempt proceeding.

22 MR. PEDERSEN: What about the request to continue the
23 trial subpoena for Mr. Cistrunk?

24 THE COURT: Thank you. I'll order Mr. Cistrunk to
25 appear in this courtroom -- what time do you want him here,

1 **Mr. Caver?**

2 **MR. CAVER:** Judge, will court commence at 9:00 o'clock?

3 **THE COURT:** Right. We'll start --

4 **MR. CAVER:** I'm sorry. On the 6th.

5 **THE COURT:** We'll start picking a jury at -- well, I'll
6 want you here at 8:45.

7 **MR. CAVER:** Judge, then I'd ask for his appearance to
8 be compelled at 8:30.

9 **THE COURT:** Mr. Cistrunk, you understand that? That
10 you're going to have to appear in this courtroom at 8:30 on
11 May 6th.

12 **DEFENDANT CISTRUNK:** Yes, sir.

13 **THE COURT:** It's a Monday morning.

14 **DEFENDANT CISTRUNK:** Yes, sir.

15 **THE COURT:** All right.

16 **MR. CAVER:** Thank you, Judge.

17 **THE COURT:** You're welcome. Court's in recess.

18 **MR. PEDERSEN:** Thank you.

19 **(Which were all the proceedings had in the above-entitled**
20 **cause on the day and date aforesaid.)**

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1 **I certify that the foregoing is a correct transcript from**
2 **the record of proceedings in the above-entitled matter.**

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5 _____
6 **Mary T. Lindbloom**
7 **Official Court Reporter**
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